

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PENSION BENEFIT GUARANTY
CORPORATION,

Plaintiff,
-against-

MEMORANDUM & ORDER
14-CV-6554 (JS) (ARL)

THOMAS O'ROURKE GALLAGHER, INC.,
as administrator of the Thomas
O'Rourke Gallagher, Inc. Defined
Benefit Pension Plan,

Defendant.

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APPEARANCES

For Plaintiff: Desiree M. Amador, Esq.
 Pension Benefit Guaranty Corporation
 1200 K Street, NW
 Washington, DC 20005

For Defendant: No appearances.

SEYBERT, District Judge:

Currently pending before the Court are: (1) plaintiff Pension Benefit Guaranty Corporation's ("Plaintiff") motion for default judgment, (Docket Entry 11); and (2) Magistrate Judge Arlene R. Lindsay's Report and Recommendation ("R&R"), recommending that this Court grant the motion for default judgment, (Docket Entry 13). For the following reasons, the Court ADOPTS the R&R in its entirety.

BACKGROUND

Plaintiff commenced this action against on November 6, 2014 against defendant Thomas O'Rourke Gallagher, Inc., as

administrator of the Thomas O'Rourke Gallagher, Inc. Defined Benefit Pension Plan ("Defendant"), seeking to (1) terminate the Thomas O'Rourke Gallagher, Inc. Defined Benefit Pension Plan (the "Pension Plan"), (2) appoint Plaintiff as trustee of the Pension Plan, (3) establish June 30, 2012 as the termination date of the Pension Plan and (4) require Defendant to convey all records and assets of the Pension Plan to Plaintiff pursuant to Section 4042(d) of the Employees Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132, et seq. (See generally Compl.)

Defendant has not answered or otherwise responded to the Complaint. On December 17, 2014, Plaintiff requested a Certificate of Default. (Docket Entry 9.) On December 18, 2014, the Clerk of the Court certified Defendant's default. (Docket Entry 10.) On December 29, 2014, Plaintiff moved for a default judgment. (Docket Entry 11.) On January 9, 2015, the undersigned referred the motion to Judge Lindsay for a report and recommendation as to whether the motion should be granted.

Judge Lindsay issued his R&R on July 21, 2015. (Docket Entry 13.) The R&R recommends that the Court grant default judgment and (1) terminate the Pension Plan, with a termination date of June 30, 2012; (2) appoint Plaintiff as the statutory trustee of the Pension Plan; and (3) order that all records, assets, or other property of the Pension Plan be transferred to Plaintiff as statutory trustee. (R&R at 1.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Lindsay's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

For the foregoing reasons, Judge Lindsay's R&R (Docket Entry 13) is ADOPTED in its entirety and Plaintiff's motion for a default judgment (Docket Entry 11) is GRANTED. The Clerk of the Court is directed to enter judgment in favor of Plaintiff and against Defendant as follows: (1) the Pension Plan is terminated as of June 30, 2012; (2) Plaintiff is appointed as the statutory trustee of the Pension Plan; and (3) Defendant is ordered to transfer all records, assets, or other property of the Pension

Plan to Plaintiff as statutory trustee. The Clerk of the Court is directed to mark this matter CLOSED.

SO ORDERED

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 18, 2015
Central Islip, New York